PT 03-16
Tax Type: Property Tax
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

ST. JOHN'S HOSPITAL	**)**	
Applicant	**)**	
	)	**Docket No. 02-PT-0013**
v.	**)**	**PIN 14-27-308-020**
	)	**PIN 14-27-308-033**
THE DEPARTMENT OF REVENUE	**)**	**PIN 14-27-308-037**
OF THE STATE OF ILLINOIS	**)**	**Tax Year 2001**
	)	**Dept. No. 01-84-84, 86, 87**

RECOMMENDATION FOR DISPOSITION

Appearances: Richard J. Wilderson of Graham & Graham for St. John's Hospital; Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois.

Synopsis:

This case concerns whether property that is located in Sangamon County and owned by St. John's Hospital ("applicant") qualifies for a property tax exemption for the year 2001. The applicant alleges that the property qualifies for an exemption on the basis that it is used exclusively for charitable purposes. The Department of Revenue ("Department") denied the exemption because the applicant leases the property to an agency of the State of Illinois, which the Department contends does not constitute a charitable use. The applicant timely protested the denial, and an evidentiary hearing was

held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The parties have stipulated that the applicant is a charitable organization within the meaning of the Property Tax Code. (Tr. p. 6)

2. On December 31, 1998, the applicant acquired three parcels of property, upon which is a building known as the Centrum North Building. (Dept. Group Ex. #1)

3. The applicant purchased the property in order to use it for physician practices, but later abandoned that plan. The applicant tried to sell the building and then tried to rent it, but was unsuccessful for over two years. (Tr. pp. 13-14)

4. On February 23, 2001, the applicant entered into a lease with the State of Illinois ("State"), Department of Central Management Services, for the use of the property by the Illinois Department of Human Services. The term of the lease was from May 1, 2001 to April 30, 2002. (Dept. Group Ex. #1; Tr. p. 14)

5. The Rental Schedule that is attached to the lease shows the monthly rental for the one-year term of 5/1/01 to 4/30/02 to be $15,727.83, plus the cost of janitorial services of $1,430.08 for a total of $17,157.91. An amended Rental Schedule shows the monthly rent for the term 8/1/01 to 4/30/02 to be $26,208.55. The expenses for the building for the year 2001 were $80,311.66. (Dept. Group Ex. #1, pp. 38, 63; Applicant's Ex. #1)

6. The applicant did not provide evidence concerning the activity that the lessee was conducting on the property during 2001. The applicant does not know what activity the lessee is conducting on the property now. (Tr. p. 17)

CONCLUSIONS OF LAW:

The provision of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) that allows exemptions for charitable purposes provides in relevant part as follows:

> All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
>
> (a) institutions of public charity. (35 ILCS 200/15-65 (a)).

Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139, 156-57 (1968). If the primary use of the property is charitable, then the property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1st Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill.App.3d 794, 796 (3rd Dist. 1987).

The exemption that relates to property owned by the State of Illinois is provided in section 15-55 of the Property Tax Code and provides in relevant part as follows:

> State property. All property belonging to the State of Illinois is exempt. However, the State agency holding title shall file the certificate of ownership and use required by Section 15-10, together with a copy of any written lease or agreement, in effect on March 30 of the assessment year, concerning parcels of 1 acre or more, or an explanation of the terms of any oral agreement under which the property is leased, subleased or rented.
>
> The leased property shall be assessed to the lessee and the taxes thereon extended and billed to the lessee, and collected in the same manner as for

> property which is not exempt. The lessee shall be liable for the taxes and no lien shall attach to the property of the State. (35 ILCS 200/15-55.)

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263, 271 (1996). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 491 (1992).

Because the parties have stipulated that the applicant is a charitable organization and there is no dispute that the applicant owns the property, the only issue is whether the property is used for a charitable purpose. The applicant argues that the property's use is charitable because the property is leased to an exempt organization that uses the property for an exempt purpose, citing Childrens Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972). In that case, property that was leased from a religious organization to a charitable organization was found to be exempt. The applicant contends that in the instant case, the lease documents show that the Illinois Department of Human Services uses the property, and there was testimony that a portion of the premises is used as a pharmacy operation. The applicant asks that administrative notice be taken of the fact that the Department of Human Services provides services to the people of Illinois, such as through the Division of Mental Health and Developmental Disabilities. The applicant also states that it does not make a profit on the lease.

The Department contends that Childrens Development Center does not apply to this case; rather, the case of Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1st Dist. 1983) controls the outcome. In Village of Oak Park, the property was leased from a religious organization to a municipality, and the court determined that the property did

not qualify for the exemption. The court found, inter alia, that the case was distinguishable from Childrens Development Center on the basis that the lessee was a municipality, which receives an exemption based on ownership only, not use. The Department states that the lessee in the present case is similar to a municipality in that its exemption is based on ownership only and not on the use of the property. The Department, therefore, believes that the property does not quality for the exemption.

The present case is distinguishable from Childrens Development Center. In that case, a religious organization leased a portion of its property to a charitable organization, which used the property to provide programs for educationally handicapped children. The court stated that "it is the primary use to which the property is devoted **after** the leasing which determines whether the tax-exempt status continues." Childrens Development Center at 336 (emphasis added). The court continued by stating "[i]f the primary use is for the production of income, that is, 'with a view to profit,' the tax-exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose the tax-exempt status of the property continues though the use may involve an incidental production of income." Id. In that case, after the leasing, the primary use of the property was to serve the charitable purpose of the lessee. Id.

In the present case, the applicant did not provide evidence concerning the primary use of the property after the leasing. During direct examination, the applicant's administrator stated that it was his understanding that the building is used by Central Management Services for the Department of Health and Human Services. He then said that recently they moved a group from Lincoln Developmental Center and now it is a

pharmacy operation. (Tr. p. 14) During cross examination, however, when he was asked if he was familiar with the actual activities that are taking place inside the building at this time, he stated, "I can't testify to what they're doing there." (Tr. p. 17) There was no testimony concerning the activities in the building during 2001.

The applicant's request that administrative notice be taken of the actual use of the property cannot be granted. The Administrative Procedure Act allows this agency to take administrative notice of matters of which the circuit courts of this State may take judicial notice. 5 ILCS 100/10-40(c). Courts may take judicial notice of that which everyone knows to be true. Carrizales v. Rheem Manufacturing Co., 226 Ill.App.3d 20, 26 (1st Dist. 1991). The daily activities that occurred on the property during 2001 do not fall within this category. Although the general activities of the Department of Human Services may be common knowledge, it is not certain that these activities actually took place on the property during 2001. It is possible that nothing at all happened on the property. Also, there is nothing in the lease that prohibits the lessee from subleasing the property. Because it is impossible to know what actually occurred on the property, it is not appropriate to take administrative notice of this, and the applicant has not established the primary use of the property after the lease became effective.

In addition, it is not clear from the record that the primary use of the property was not the production of income. In Village of Oak Park, the court found that "the record indicates that the property in question was leased to the Village with a view to profit rather than to furthering some religious purpose of the Church." Village of Oak Park at 500. The applicant in this case has not established that the property was leased to the State without a view to profit. When the applicant's administrator was asked if the

applicant made a profit on the building for the year 2001, he replied, "Well, we did have a return on that year, but ultimately that return was less than what we make on our investment account." (Tr. pp. 15-16) When he was asked if it was fair to say that this building is not leased with a view toward profit, he said, "It has not proved to be profitable, no." (Tr. p. 16)

The documents submitted by the parties, however, are not consistent concerning the amount of income earned from the lease in 2001. A "Rental Schedule" is attached to the lease that shows the monthly rent for the one-year term of 5/1/01 to 4/30/02 to be $15,727.83, plus the cost of janitorial services of $1,430.08 for a total of $17,157.91. (Dept. Group Ex. #1, p. 38) There is also an amended Rental Schedule that shows the monthly rent for the term 8/1/01 to 4/30/02 to be $26,208.55. (Dept. Group Ex. #1, p. 63) The applicant submitted a "Cash Flow Statement" for the building that shows income from the State for the year 2001 to be $34,315.82.[1] (Applicant's Ex. #1) The applicant did not explain why the State apparently paid only two months worth of rent at a rate that was in effect between 5/1/01 and 8/1/01. It is unclear why the income on the cash flow statement differs from the amount of rent that the applicant should have received according to the lease.

Furthermore, the expenses for the building that are listed on the cash flow statement for the year 2001 were $80,311.66. (Applicant's Ex. #1) If the applicant received the amount of rent that was to be paid according to the lease, the applicant would have earned a substantial profit from the lease for the year 2001. The cash flow statement also projects the income and expenses for the years 2002 through 2010, and the applicant expects to earn a profit that varies between approximately $181,000 and

$205,000 each year. (Applicant's Ex. #1) The applicant, therefore, has not established that the primary purpose of the lease is not the production of income.

The applicant asserts that the Department's arguments concerning Village of Oak Park are legally flawed because the exemption for property owned by the State is based on both the ownership and use of the property, rather than just ownership. The applicant claims that property owned by the State but leased to a private, for-profit operator is not exempt. The applicant also refers to the fact that in Section 15-55, which concerns the exemption for State property, the State agency that holds title to the property is required to file a "certificate of ownership and use required by Section 15-10." 35 ILCS 200/15-55. The applicant believes that this shows that use is a necessary component of the exemption.

The applicant's arguments are without merit. Section 15-55 specifically exempts all property owned by the State, which is authorized under section 6 of article IX of the constitution of 1970 and provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits. Ill.Const. (1970) art. IX, §6.

Courts have interpreted this provision and the statutes that implement it to require ownership only for municipalities and ownership and use for charitable organizations. See Village of Oak Park, supra.; Childrens Development Center, supra. The statute in Village of Oak Park concerning municipalities (Ill.Rev.Stat. 1981, ch. 120, par. 500.6) is similar to section 15-55 because, unlike the charitable purposes exemption, the State and

[1] If the State paid rent of $17,157.91 for two months, the total is $34,315.82.

municipality statutes do not include the language requiring the property to be "actually and exclusively used" for the exempt purpose. The Illinois Supreme Court found that under the previous statutes and constitution, which are similar to the current provisions in the statutes and constitution, the test for exemption of property owned by municipal corporations is ownership only. Public Building Commission of Chicago v. Continental Illinois National Bank and Trust Company of Chicago, 30 Ill.2d 115, 122 (1963). Because courts have found that the exemption for municipal property, which is similar to the exemption for State property, is based on ownership only, it is reasonable to conclude that the exemption for State property would be based on ownership only as well.

Also, Section 15-55 provides that "leased property shall be assessed to the lessee and the taxes thereon extended and billed to the lessee, and collected in the same manner as for property which is not exempt. The lessee shall be liable for the taxes and no lien shall attach to the property of the State." 35 ILCS 200/15-55. If the State leases property to a private, for-profit organization, then the lessee is responsible for the taxes. This does not, however, mean that if the State owns property that is not leased then the use of the property is relevant. For State-owned property that is not leased, it is only ownership that determines the exemption.

The certificate requirement as set forth under section 15-10 does not change the fact that property owned by the State, regardless of how it is used, is exempt. That provision provides in relevant part as follows:

> Exempt property; procedures for certification. All property described in the Sections following Section 15-30 and preceding Section 16-5, to the extent therein limited, is exempt from taxation. **However, it is the duty of the titleholder or the owner of the beneficial interest of any property that is exempt, * * * to file with the chief county assessment officer, on or before January 31 of each year * * *, an affidavit stating whether**

> **there has been any change in the ownership or use of the property** or the status of the owner-resident, or that a disabled veteran who qualifies under Section 15-165 owned and used the property as of January 1 of that year. * * * The nature of any change shall be stated in the affidavit. Failure to file an affidavit shall, in the discretion of the assessment officer, constitute cause to terminate the exemption of that property, notwithstanding any other provision of this Code. * * * (emphasis added, 35 ILCS 200/15-10 (2000).)

As the language of the statute indicates, the filing of the affidavit is to verify whether there has been any **change** in the ownership or use of property that is entitled to an exemption. This is a general notification requirement that does not in any way indicate that the use of the property is relevant in determining the exemption for State property. The present case is, therefore, similar to Village of Oak Park because the lessee in both of these cases is an organization that receives an exemption based on ownership only.

The applicant has requested that administrative notice be taken of two administrative hearing decisions. Administrative notice will be taken of the decisions, but both of them are distinguishable from the instant case. In the first one, Docket No. 92-84-104, the ALJ found that property leased by St. John's Hospital to Southern Illinois University Medical School was exempt. In the second one, Docket No. 83-25-109 and 110, the ALJ found that property leased by a religious organization to the local school district was exempt. Unlike the present case, in both of those cases there was no issue concerning the actual use of the property. Also, there was no indication that the properties were leased with a view to profit.

The applicant argues that additional support for its position is found in the recent amendment to the provision concerning exemptions for charitable purposes. The amendment added the following highlighted paragraph:

Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

* * *

(c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.

An applicant that has been granted an exemption under this subsection on the basis that its bylaws provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services may be periodically reviewed by the Department to determine if the waiver or reduction was a past policy or is a current policy. The Department may revoke the exemption if it finds that the policy for waiver or reduction is no longer current.

If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt. (emphasis added) (35 ILCS 200/15-65 (a), (c)).

The applicant believes that this amendment codified the holding in Childrens Development Center. The applicant argues that the legislative history indicates that the legislature intended to exempt property that is leased from one exempt organization to another.

The Department argues that the words "under this subsection" clearly means that the amendment was intended to apply only to those organizations listed in subsection (c), i.e., old people's homes, facilities for the developmentally disabled, and mixed use facilities. The applicant is not one of those organizations. The Department notes that the amendment uses language identical to that used in the prior paragraph, which existed before the amendment, and the prior paragraph clearly has specific substantive application to the facilities mentioned only in subsection (c). Therefore, the amendment must also only apply to that subsection. In addition, the last paragraph of Section 15-65, which is not included under a subsection, refers to "an exemption under this Section." (35 ILCS 200/15-65.) The Department maintains that this language clearly has broader application, and if the legislature had intended the amendment to apply to all exempt property, then it would have used this language.

The Department also contends that the statute's plain language is the best indicator of the legislature's intent, citing Lulay v. Lulay, 193 Ill.2d 455 (2000). When the language is clear, it will be given effect without resort to other aids for construction. Petersen v. Wallach, 198 Ill.2d 439 (2002). It is only when the statutory language is ambiguous that it is appropriate to resort to extrinsic aids, such as legislative history. Kunkel v. Walton, 179 Ill.2d 519 (1997). The Department, therefore, argues that because the statute is not ambiguous, there is no need to look at the legislative history.

The Department's arguments are persuasive. The language of the statute is not ambiguous, and the phrase "under this subsection" clearly refers only to facilities listed under subsection (c). If the legislature had intended the amendment to apply to all organizations referred to in the entire "charitable purposes" section, then it would not

have used the prefix "sub" before the word "section." It also would not have included the amendment within subsection (c), rather than making it a separate paragraph as it did with other paragraphs in that section. Because the language is not ambiguous, it is not necessary to look to the legislative history of the amendment.[2] The amendment applies only to property listed in subsection (c).

Recommendation:

For the foregoing reasons, it is recommended that the property is not entitled to an exemption for 2001.

_____
Linda Olivero
Administrative Law Judge

Enter: June 30, 2003

[2] The legislative history is ambiguous in that it indicates that the amendment was intended to apply to "property that's currently exempt and another organization that wants to use the property that also is exempt." (Senate Transcript, 92nd General Assembly, May 18, 2001, p. 41) It is not clear whether this refers to exempt property where only ownership is required for the exemption, or whether it applies to property where ownership and use are required. However, the legislative history clearly indicates that the lessee must be using the property for an exempt use, and the lease must not be for profit. Id. In this case, the applicant has not established either of these requirements. As a final note, the amendment did not become effective until August 16, 2001 (P.A.92-382), so if it did apply, it would not apply to the entire year in question.